IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22373 of 2007

With

SPECIAL CIVIL APPLICATION No. 22375 of 2007

To

SPECIAL CIVIL APPLICATION No. 22379 of 2007

With

SPECIAL CIVIL APPLICATION No. 22397 of 2007

To

SPECIAL CIVIL APPLICATION No. 22404 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRIMALI BHARATKUMAR BALDEVBHAI & 5 - Petitioners
Versus
C.S. HOTELS PVT. LTD. (HOTEL KARNAWATI) THRO. CHAIMAN-CUM- & 1 - Respondents

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Appearance :

MR TR MISHRA for Petitioners : 1 - 6.
NOTICE SERVED BY DS for Respondent : 1,
MR HEMANT MAKWANA AGP for Respondent : 2,
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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 29/10/2007

COMMON ORAL JUDGMENT

1. Rule. Mr. Vasavada, learned counsel waive service of Rule on behalf of respondent No. 1 and Mr. Makwana, learned AGP waives service of Rule on behalf of respondent No. 2. By consent, Rule is fixed forthwith.

2. Shri Mishra, learned counsel appearing for the petitioner does not pressed these petitions so far as prayer 5(A) is concerned. Accordingly, now these petitions are confine to only prayer 5(B) and (C) as the prayer 5(A) would in fact does not survive in view of the judgment and order passed in Special Civil Application No. 21171 of 2006 and 21167 of 2006.

3. In this group of petitions, the workmen have challenged the inaction on the part of the District Collector in enforcing the recovery certificates annexed in the petitions against the respondent – Hotel Management.

4. Shri Mishra, learned counsel appearing for the petitioners submitted that despite there being a valid certificates enuring in favour of the workmen, the respondent No. 2 – District Collector / Recovery Officer has not taken any

steps to recover the amount and therefore, the workmen are constrained to prefer these petitions.

5. Shri Vasavada, learned counsel appearing for the respondent No. 1 – Hotel Management submits at bar that these certificates based whereon the attachment notices have been issued are forming part of the challenge in Special Civil Application No. 21167 of 2006, which this Court has disposed of by common judgment and order dated 24.9.2007.

6. Shri Mishra, learned counsel appearing for the petitioners in his rejoinder submitted that this petitions are slightly different then the earlier matter. Apropos court's observation in the petitions were preferred by Hotel Management challenging the ex-parte awards and orders passed, whereof the recovery certificate and attachment notices were issued which were in fact subject matter of the aforesaid petitions. So far as present petitions are concerned, the ex-parte award has not been challenged at all and therefore, it has contained finality and appropriate directions deserve to be issued.

7. Heard learned counsel for the parties. It deserves to be noted that this Court has disposed of the entire group of petitions, wherein Special Civil Application No. 21167 of 2006 was one of the mattes and issued certain directions. In addition to those directions, these petitions deserve to be disposed of by giving following directions which are in consonance with the directions issued in the common judgment and order dated 24.9.2007 passed in aforesaid

group of matters.

(i) The respondent No.2 - the District Collector / Recovery Officer is directed to enforce the Recovery Certificate impugned in the petitions under the provisions of the Bombay Land Revenue Code as if it is land arrears from the respondent C.S.Hotel Pvt. Ltd. while enforcing the certificate, the respondent No. 2 shall bear in mind that no personal properties of either Managing Director or Directors, wherein the preset Hotel Management has no share or interest be attached.

(ii) The respondent No. 2 – District Collector / Recovery Officer shall be at liberty to attach all the properties or any of the properties owned and in control of the C.S.Hotel Pvt. Ltd. and other properties, wherein C.S.Hotel Pvt. Ltd has its interest.

(iii) The concerned workmen shall filed appropriate affidavit stating before the authorities i.e. District Magistrate/ Recovery Officer as to whether he has received any amount against the recovery certificate impugned in the petitions and if yes, how much amount. If he has received any amount against the recovery certificate, then that shall be adjusted before disbursing the amount.

(iv) The entire exercise shall be over within a period of three months from the date of receipt of this order.

(v) Liberty is granted to the parties to move this court in case of difficulty.

8. In view of the aforesaid directions, the petitions are allowed. Rule is made absolute to the aforesaid extent in each matter. There shall be no order as to costs. Registry is directed to place the copy of this judgment and order in all the matters.

(S.R.BRAHMBHATT, J.)

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